



CITY OF DURHAM | DURHAM COUNTY
NORTH CAROLINA

MEMORANDUM



Date: November 23, 2009

To: Michael M. Ruffin, County Manager

Through: Wendell Davis, Deputy County Manager

From: Steven L. Medlin, AICP, City-County Planning Director

Subject: Amendment to the Unified Development Ordinance – Sedimentation and Erosion Control (TC0900007)

Summary. This proposed amendment includes a set of changes to the Unified Development Ordinance (UDO) that will bring Durham County into compliance with sedimentation and erosion control measures required in recent state legislation to address water quality in Falls Lake. It also includes related UDO text changes recommended by the Environmental Enhancements to the UDO Steering Committee and changes recommended by staff to reorganize and clarify the relevant sections to make them more user-friendly and effective. The proposed text is shown in Attachments A and B.

The Board of County Commissioners granted this amendment expedited hearing status on August 10, 2009 pursuant to UDO Sec. 3.20.5B, Expedited Hearing. The City Council will consider this item on December 7, 2009.

Recommendations. The Planning Department is recommending approval.

The Planning Commission held a public hearing on this proposed text amendment on October 13, 2009 and recommended approval by a vote of 13-0.

Background. In the summer of 2008, the Joint City-County Planning Committee (JCCPC) established a Steering Committee for the Environmental Enhancements to the UDO (EEUDO). This Steering Committee, made up of development community representatives, neighborhood leaders, and environmental activists, and co-chaired by Commissioner Reckhow and Councilman Woodard, created a set of recommendations in May of 2009 for improvements to UDO environmental regulations. Those improvements focus on four areas: sedimentation and erosion control; water quality and stream buffers; site preparation; and tree protection and preservation. Attachment C is the section of these recommendations pertaining to sedimentation and erosion control. In June of 2009, the JCCPC instructed staff to begin implementing the Steering Committee recommendations.

A parallel effort was undertaken through the state legislature to improve water quality in Falls Lake. The resulting legislation, S.L. 2009-486 (Attachment D), requires Durham

County to adopt more stringent sedimentation and erosion control measures by January 1, 2010. On September 2, 2009, the JCCPC recommended that staff initiate a sedimentation and erosion control text amendment containing the State requirements, the EEUDO recommendations, and changes proposed by staff. On October 13, 2009, the Planning Commission held a public hearing on this item and voted unanimously (13-0) to recommend approval.

Since the Planning Commission public hearing, a set of changes have been made to the proposed text amendment reflecting requests of the Planning Commission and state regulators. They include (references below are to the proposed, not current, paragraph designations):

- Adding a citation of the state statute regarding the 30-day requirement before commencing land-disturbing activity in paragraph 3.8.1B;
- Changing the word “should” to “shall” in paragraph 12.10.3D, Control Surface Water;
- Changing the state law citation in the commentary to paragraph 12.10.4B, Stabilization of Disturbed Land, from the senate bill to the session law;
- Removing reference to “uncovered” land in the first sentence of paragraph 12.10.4C, Stabilization of Sedimentation and Erosion Control Devices;
- Deleting the last row in the chart in paragraph 12.10.5B.1; and
- Making additional clarifying technical changes throughout the text.

Issues. The changes required by S.L. 2009-486 are included in the proposed text and listed below with the proposed UDO references and Attachment A page numbers.

- Sediment traps and basins must be sized to handle a 25-year storm event (Sec. 12.10.4D, page 16 and 12.10.5B, pages 18-19).
- Sediment traps and basins must have a settling efficiency of 70 percent (Sec. 12.10.4F, page 16).
- Stormwater channels must be designed with slopes that can restrain accelerated erosion (Sec. 12.10.4J, page 17).
- Stabilization measures must conform to the following schedule (Sec. 12.10.4B, page 15):
 - Seven days for permanent groundcover; or
 - For temporary cover:
 - Fourteen days for areas of no slope;
 - Ten days for areas of moderate slope, defined as an inclination of 3:1 or less; or
 - Seven days for steep slopes, defined as an inclination of greater than 3:1.

The proposed text also includes four additional measures recommended by the EEUDO Steering Committee. They are listed below with the proposed UDO references and Attachment A page numbers.

- Lower the threshold for the size of land disturbance that requires an erosion control plan from one acre (43,560 square feet) to 20,000 square feet (Sec. 12.10.2B, page 12).
- Require stabilization measures within seven days on traps, basins, and diversion ditches (Sec. 12.10.4C , pages 15-16).
- Require the use of skimmers in traps and basins (Sec. 12.10.4E, page 16).
- Maintain a minimum 3,600 cubic foot basin in the Suburban and Rural tiers while employing the use of a skimmer (current minimum with a skimmer is 1,800 cubic feet) (Sec. 12.10.4E, page 16).

In addition, staff recommends using this opportunity to make a series of technical changes designed to improve the organization of sedimentation and erosion control provisions and clarify technical requirements, such as:

- Moving procedural requirements to Section 3.8;
- Moving technical requirements to Section 12.10;
- Removing references to inapplicable items, such as a fee reduction schedule that has not been adopted by the Board of County Commissioners, and trout waters and coastal areas which do not exist in Durham County;
- Clarifying the steep slope definition for sedimentation and erosion control mandated by state law in Section 8.8;
- Identifying watershed protection overlay districts, rather than high quality water districts, as areas that will require a land disturbance permit at 12,000 square feet in Section 12.10.2B;
- Clarifying technical requirements for land disturbance activities; and
- Amending Sections 15.1 and 15.5 to align penalties with the new provisions in Sections 3.8 and 12.10.

Due to the January 1, 2010 deadline for adoption of the amendments contained in S.L. 2009-486, an expedited text amendment process is necessary. The Board of County Commissioners approved expedited review of the required changes on August 10, 2009.

The EEUDO Steering Committee, upon completing its recommendations in May 2009, requested the opportunity to review and provide input on the draft text changes resulting from the EEUDO process. However, due to the time constraint for adoption imposed by S.L. 2009-486, there is not sufficient time to bring the matter back before the Committee. The four additional items recommended by the Committee had no significant opposition during its initial deliberations. Committee members were made aware of the need for expedited adoption via e-mail on September 9, 2009, and advised of the proposed changes. Staff subsequently met with a committee member at his request to discuss the proposed text, and a committee member was present at the Planning Commission hearing. Committee members on the Planning Commission and the JCCPC received copies. No committee member has raised an objection or concern to date, and no one spoke at the Planning Commission hearing.

Alternatives. The Board of County Commissioners may approve the amendment, deny the portions of the amendment not required under S.L. 2009-486, or direct modifications of the language not required under S.L. 2009-486.

Staff Contacts.

Chris Roberts, PE, Stormwater and Erosion Control Division Manager, 560-0739, croberts@co.durham.nc.us

Julia Mullen, Planner, 560-4137 x28255, julia.mullen@durhamnc.gov

Aaron Cain, AICP, Senior Planner, 560-4137 x28226, aaron.cain@durhamnc.gov

Attachments: Attachment A - Mark-up Copy of Proposed Ordinance
Attachment B - Clean Copy of Proposed Ordinance
Attachment C - Environmental Enhancements to the UDO,
Sedimentation and Erosion Control
Attachment D - Session Law 2009-486
Attachment E - Planning Commission Comments

Cc: Keith Luck, Assistant Director, Durham City-County Planning Department
Glen Whisler, Director, Durham County Engineering Department